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47 CFR Ch. I (10–1–05 Edition)

does not apply if the proceedings have been consolidated.

(d) Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.

(e) Comments and replies and other documents filed in electronic form by a party represented by an attorney shall include the name and mailing address of at least one attorney of record. Parties not represented by an attorney that file comments and replies and other documents in electronic form shall provide their name and mailing address.

[28 FR 12432, Nov. 22, 1963, as amended at 41 FR 50399, Nov. 16, 1976; 50 FR 26567, June 27, 1985; 54 FR 29037, July 11, 1989; 63 FR 24125, May 1, 1998; 63 FR 56091, Oct. 21, 1998; 67 FR 13223, Mar. 21, 2002]

§ 1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments.

(a) Comments filed in proceedings for amendment of the FM Table of Allotments (§73.202 of this chapter) or the Television Table of Allotments (§73.606 of this chapter) which are initiated on a petition for rule making shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of the FM or Television Tables of Allotments shall be served on the person(s) who filed the comments to which the reply is directed.

(c) Such comments and reply comments shall be accompanied by a certificate of service.

(d) Counterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments.

(e) An original and 4 copies of all petitions for rulemaking, comments, reply comments, and other pleadings shall be filed with the Commission.

(f) Petitions for reconsideration and responsive pleadings shall be served on parties to the proceeding and on any licensee or permittee whose authorization may be modified to specify operation on a different channel, and shall

be accompanied by a certificate of service.

(g) The Commission may modify the license or permit of an FM station to another class of channel or of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend §73.202(b), §73.504(a) or §73.606(b) if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) If another interest in the proposed channel is timely filed an additional equivalent class of channel is also allotted, assigned or available for application, or

(3) With respect to FM, the modification of license or permit would occur on a mutually exclusive higher class adjacent or co-channel.

NOTE 1 TO PARAGRAPH (g): In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See §73.203(b) of this chapter.

NOTE 2 TO PARAGRAPH (g): The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to §73.3573 may be initiated through the filing of an original petition for amendment of the FM Table of Allotments. The Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rule making, except that where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, the Commission will issue an order to show cause as set forth in Note 4 to §73.3573, and a notice of proposed rule making will be issued only after the reclassification issue is resolved. Triggering petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application to increase antenna height to at least 451 meters HAAT by a subject Class C station.

(h) Where licensees (or permittees) of television broadcast stations jointly petition to amend §73.606(b) and to exchange channels, and where one of the licensees (or permittees) operates on a commercial channel while the other operates on a reserved noncommercial educational channel within the same

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band, and the stations serve substantially the same market, then the Commission may amend § 73.606(b) and modify the licenses (or permits) of the petitioners to specify operation on the appropriate channels upon a finding that such action will promote the public interest, convenience, and necessity.

NOTE 1 TO PARAGRAPH (h): Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C3, C2, C1, or C on Channel 221, and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential non-commercial education service.

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

(5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[39 FR 44022, Dec. 20, 1974, as amended at 40 FR 53391, Nov. 18, 1975; 41 FR 1287, Jan. 7, 1976; 51 FR 15629, Apr. 25, 1986; 51 FR 20291, June 4, 1986; 52 FR 8260, Mar. 17, 1987; 52 FR 25866, July 9, 1987; 54 FR 16366, Apr. 24, 1989; 54 FR 26201, June 22, 1989; 55 FR 28914, July 16, 1990; 58 FR 38535, July 19, 1993; 59 FR 59503, Nov. 17, 1994; 61 FR 43472, Aug. 23, 1996; 65 FR 79776, Dec. 20, 2000]

§ 1.421 Further notice of rulemaking.

In any rulemaking proceeding where the Commission deems it warranted, a further notice of proposed rulemaking will be issued with opportunity for parties of record and other interested persons to submit comments in conformity with §§ 1.415 and 1.419.

§ 1.423 Oral argument and other proceedings.

In any rulemaking where the Commission determines that an oral argument, hearing or any other type of proceeding is warranted, notice of the time, place and nature of such proceeding will be published in the FEDERAL REGISTER.

[58 FR 66300, Dec. 20, 1993]

§ 1.425 Commission action.

The Commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding and will issue a decision incorporating its finding and a brief statement of the reasons therefor.